Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

STATE OF MARYLAND,
Petitioner,

v.

KEVIN DARNELL DYSON,
Respondent.

On Petition For Writ of Certiorari
To The Court of Special Appeals of Maryland

PETITION FOR WRIT OF CERTIORARI

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

GARY E. BAIR*
KATHRYN GRILL GRAEFF
Assistant Attorneys General

Office of the Attorney General
200 Saint Paul Place
Baltimore, Maryland 21202
(410) 576-6422

Counsel for Petitioner

**Counsel of Record*

36pp

QUESTION PRESENTED

When the police have probable cause to believe a mobile car contains contraband, is a warrantless search of the car permitted regardless of the existence of exigent circumstances?

PARTIES TO THE PROCEEDING

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Petitioner, the State of Maryland, respectfully requests that a writ of certiorari issue to review the judgment of the Court of Special Appeals of Maryland.

OPINIONS BELOW

The reported order of the Court of Appeals of Maryland denying the State's petition for a writ of certiorari, *State v. Dyson*, 351 Md. 287, 718 A.2d 235 (1998), is reproduced in Appendix A. (App. 1a).

The reported opinion of the Court of Special Appeals of Maryland, *Dyson v. State*, 122 Md. App. 413, 712 A.2d 573 (1998), reversing the judgment of the Circuit Court for St. Mary's County, is reproduced in Appendix B. (App. 2a-18a).

The August 26, 1997 unreported ruling of the Circuit Court for St. Mary's County, Maryland in *State v. Dyson*, Criminal Case No. 96-335, denying Dyson's motion to suppress, is reproduced in Appendix C. (App. 19a-20a).

STATEMENT OF JURISDICTION

The decision of the Court of Special Appeals of Maryland reversing Dyson's conviction was filed on June 30, 1998. The order of the Court of Appeals of Maryland denying the State's petition for a writ of certiorari was filed on October 9, 1998. This petition is filed within ninety days of the denial of the petition for a writ of certiorari, as required by Rule 13 of the Rules of the Supreme Court. Therefore, jurisdiction of this Court is properly invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment IV provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

At 11:00 a.m. on July 2, 1996, Sergeant Lyle Long, a 23-year veteran of law enforcement, received a telephone call from a confidential informant. (App. 12a). Long previously had interviewed this informant to establish that the informant knew of the dealers and local drug trade in St. Mary's County, and he previously had used this informant to obtain a drug conviction. (*Id.* at 11a-12a). The informant told Long that Respondent, Kevin Dyson, was in the New York City area that day for the purpose of purchasing cocaine. (*Id.* at 13a). He further reported that Dyson would be leaving New York at approximately 11:00 a.m. that morning and returning to St. Mary's County with the cocaine. (*Id.*). The informant advised that Dyson would be driving an Enterprise rental car, a red Toyota Corolla, with Maryland license tag number DDY 787. (*Id.*). Another male would be driving a second vehicle, possibly a dark 280Z.

Long was able to corroborate much of the information given by the informant. Long had independent

information from another source that Dyson was a supplier of cocaine, who received his supply from New York. (App. 13a). Using the tag number provided by the informant, Long was also able to determine that the car was owned by Enterprise Rental Company, and the company subsequently advised that it had rented the vehicle to Dyson. (*Id.* at 14a).

Based on the time that the informant said Dyson left New York, Long calculated that Dyson would arrive in St. Mary's County at approximately 1:00 or 2:00 a.m. At 1:00 a.m., while the police were conducting surveillance, Dyson's vehicle was seen in St. Mary's County. (*Id.* at 7a). Dyson was driving a red Toyota, with the tag number given by the informant, and a second car, a Nissan 280Z, was following Dyson's car. Once the police corroborated the reliable informant's detailed tip, they stopped Dyson and searched his vehicle. (*Id.*). Twenty-three grams of crack cocaine were found in the trunk in a duffle bag. (*Id.* at 7a, 18a).

Prior to trial, Dyson filed a motion to suppress the cocaine on the ground that the police did not have probable cause to search the vehicle. (*Id.* at 6a). Alternatively, Dyson argued that, even if the police did have probable cause to search, the warrantless search was improper because there was sufficient time after the informant's tip to obtain a warrant.

The suppression court rejected Dyson's argument that the warrantless search was illegal, stating that, pursuant to "the *Carroll* doctrine,"[1] the police may search a vehicle without a warrant if they have probable cause to believe that evidence of crime is contained in the automobile and

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[1] *Carroll v. United States*, 267 U.S. 132 (1925).

there are exigent circumstances attendant to the search. (App.19a-20a). The court found that probable cause existed once Dyson arrived in St. Mary's County pursuant to the informant's tip. (*Id.*). Once the mobile vehicle was stopped, exigent circumstances existed and the police were not required to get a warrant. (*Id.* at 20a).

After Dyson was convicted of conspiracy to possess cocaine with the intent to distribute, (App. 2a), he appealed to the Court of Special Appeals of Maryland. One of the arguments Dyson made was that the trial court erroneously denied his motion to suppress the cocaine. (*Id.* at 2a). Maryland's intermediate appellate court agreed. (*Id.* at 17a).

The court noted that one of the exceptions to the general rule that a warrant be secured before a search is undertaken is the "automobile exception." (App. 9a-11a).[2] The court stated that, in order to have a valid warrantless search of an automobile pursuant to the automobile exception, two conditions must coexist:

1) **PROBABLE CAUSE** to believe that evidence of crime is contained in the automobile or automobile equivalent; and
2) **EXIGENCY**.

(App. 11a).

With respect to the first condition, the court found that ample probable cause was shown here. (*Id.* at 12a). Probable cause existed based upon the reliable informant's tip and the corroboration of that tip, including the

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[2] The Court of Special Appeals of Maryland took issue with this terminology and suggested that it would be more appropriate to refer to this exception as the "*Carroll* Doctrine." (App. 9a).

information Sergeant Long independently possessed and the information he obtained regarding the rental of the red Toyota to Dyson. (App. 12a-14a).

The court next examined what it held was a second requisite condition, exigency. (App. 14a-17a). The court stated that exigency "arises from the ready mobility of the automobile" and the risk of imminent disappearance of the automobile. (*Id.* at 11a-12a). The court proclaimed that if probable cause had developed at the time of the stop of the moving vehicle at 1:00 a.m. on July 3, exigency would have existed. (*Id.* at 15a). The court held, however, that probable cause existed at approximately noon on July 2, after the call to the Enterprise Car Rental Company. (*Id.* at 15a-16a). The court stated that in the absence of a showing that it would have been impossible, or even difficult, for the police to have obtained a search and seizure warrant for Dyson's car prior to his anticipated return to St. Mary's County, the State "failed to carry its burden of showing the type of exigency necessary to exempt it from the warrant requirement." (*Id.* at 16a-17a). Accordingly, the court held that the warrantless search was not reasonable pursuant to the automobile exception. (*Id.* at 17a).

The State of Maryland filed a petition for a writ of certiorari in the Court of Appeals of Maryland, contending that the Court of Special Appeals misapplied Fourth Amendment law in holding that exigent circumstances are required to permit a warrantless search pursuant to the "automobile exception." The Court of Appeals denied the State's petition for writ of certiorari on October 9, 1998. (App. 1a).

REASONS FOR GRANTING THE WRIT

I.

THE RULING OF THE COURT OF SPECIAL APPEALS OF MARYLAND IS IN DIRECT CONFLICT WITH THIS COURT'S PRECEDENT.

The ruling of the Court of Special Appeals, that exigent circumstances are necessary to uphold a warrantless automobile search, is in direct conflict with this Court's prior cases. Although the automobile exception was initially based upon exigent circumstances occasioned by the ready mobility of the automobile, *Carroll v. United States*, 267 U.S. 132, 153 (1925), this Court subsequently has "made clear that ready mobility is not the only basis for the exception." *California v. Carney*, 471 U.S. 386, 391 (1985). In *Carney*, this Court noted that this exception to the warrant requirement governs not only because of the element of mobility, but also because "the expectation of privacy with respect to a person's automobile is significantly less than that related to one's home or office." *Id.* Thus, "[e]ven in cases where an automobile was not immediately mobile, the lesser expectation of privacy resulting from its use as a readily mobile vehicle justified application of the vehicular exception." *Id.* at 391.

To the extent that there was any doubt after *Carney* about whether the prosecution was required to show exigent circumstances to justify a warrantless search of an automobile, this Court removed it in *Pennsylvania v. Labron*, 518 U.S. 938 (1996) (per curiam). There, the

Supreme Court of Pennsylvania held, as the Maryland Court of Special Appeals here held, that the Fourth Amendment requires the police to obtain a warrant before searching an automobile unless exigent circumstances are present. *Id.* at 939. This Court reversed, noting that such a holding rested "on an incorrect reading of the automobile exception to the Fourth Amendment's warrant requirement." *Id.* This Court noted that "[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more." *Id.* at 940, *citing California v. Carney*, 471 U.S. at 393.

The Maryland court's ruling, that both probable cause *and* exigency are required to sustain a search pursuant to the automobile exception, is in direct conflict with this Court's decisions in *Carney* and *Labron*. Accordingly, Maryland requests that this Court grant the petition and summarily reverse the decision of the Court of Special Appeals.

II.

RELATED ISSUES ARE PENDING BEFORE THIS COURT.

Even if this Court is not inclined to reverse the decision of the Maryland Court of Special Appeals on the basis of *Carney* and *Labron*, it should still hold the petition for writ of certiorari pending this Court's disposition in *White v. State*, 710 So. 2d 949 (Fla.), *cert. granted sub nom. Florida v. White*, 119 S. Ct. 508 (1998) (No. 98-223). Both *White* and the instant case involve the requisite conditions to invoke the automobile exception to the

Fourth Amendment's warrant requirement.[3]

The issue in *White* is whether the Fourth Amendment requires a warrant to seize and search a car under the Florida Contraband Forfeiture Act. Pursuant to the forfeiture statute, the police seized White's automobile based upon probable cause to believe that the vehicle had facilitated illegal drug activity at some time in the past. *White v. State*, 710 So. 2d at 950. The Supreme Court of Florida held that the warrantless seizure and search of White's vehicle was not authorized pursuant to the automobile exception because there was no probable cause to believe that the vehicle contained contraband and there were no exigent circumstances preventing the police from obtaining a warrant. *Id.* at 952-54.

The ruling of the Supreme Court of Florida, that a search and seizure pursuant to the automobile exception requires an independent showing of exigency that made it difficult for the police to obtain a warrant, *id.* at 955, like the decision of the Court of Special Appeals here, is contrary to the clear language of *Carney* and *Labron*. In deciding *White*, this Court has the opportunity to lay to rest any remaining confusion regarding whether a showing of exigency is a prerequisite to a search or seizure pursuant

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[3] This Court is scheduled to hear another case this Term involving the automobile exception, *Houghton v. State*, 956 P.2d 363 (Wyo.), *cert. granted sub nom. Wyoming v. Houghton*, 119 S. Ct. 31 (1998) (No. 98-184). That case involves the proper scope of a search pursuant to the automobile exception, i.e., whether a search of a passenger's purse is within the scope of a legitimate warrantless automobile search based on probable cause to believe that the driver had concealed contraband in the car.

to the automobile exception. A ruling on this issue will be dispositive of the instant case.

CONCLUSION

For the foregoing reasons, the State of Maryland respectfully requests that the petition for writ of certiorari be granted and the decision of the Court of Special Appeals be summarily reversed in accordance with *Carney* and *Labron*. Alternatively, Maryland requests that the petition for writ of certiorari be held pending this Court's disposition in *Florida v. White*, and that it be disposed of in light of the Court's decision in that case.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

GARY E. BAIR*
KATHRYN GRILL GRAEFF
Assistant Attorneys General

Counsel for Petitioner

**Counsel of Record*
December 31, 1998

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Reported order of the Court of Appeals of Maryland, filed October 9, 1998, *State of Maryland v. Kevin Darnell Dyson*, 351 Md. 287, 718 A.2d 235 (1998) 1a

APPENDIX B:

Reported opinion of the Court of Special Appeals of Maryland, *Kevin Darnell Dyson v. State of Maryland*, 122 Md. App. 413, 712 A.2d 573 (1998) 2a

APPENDIX C:

Unreported ruling of the Circuit Court for St. Mary's County, Maryland, issued August 26, 1997, *State of Maryland v. Kevin D. Dyson*, Criminal Case No. 96-335 ..... 19a

APPENDIX A

STATE OF MARYLAND	*	IN THE
	*	COURT OF APPEALS
v.	*	OF MARYLAND
	*	Petition Docket No. 351
KEVIN DARNELL DYSON	*	September Term, 1998 (No. 1527, Sept. Term, 1997, Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell

Chief Judge

Date: OCT 9 1998

APPENDIX B

KEVIN DARNELL DYSON

v.

STATE OF MARYLAND

No. 1527, Sept. Term, 1997.

Court of Special Appeals of Maryland.

June 30, 1998

Submitted before MURPHY, C.J., MOYLAN, J., and JOHN J. BISHOP, Jr., Judge (retired), Specially Assigned.

MOYLAN, Judge.

In a non-jury trial in the Circuit Court for St. Mary's County, the appellant, Kevin Darnell Dyson, was convicted of conspiracy to possess cocaine with intent to distribute. On this appeal, he raises the two contentions

1. that the trial court erroneously denied his motion to dismiss the indictment because of the State's failure to bring him to trial within 180 days; and
2. that the trial court erroneously denied his motion to suppress the physical evidence.

The Forfeiture of the Right to Complain

We see no merit in the appellant's first contention. Following his indictment on July 29, 1996, the appellant first appeared before the court for arraignment on September 6. That was the day, therefore, on which the 180-day clock of Maryland Rule 4-271 began to tick. Pursuant to the Rule, the appellant was entitled to a trial on or before March 4, 1997. Trial was initially set for January 7. On January 3, the State moved for a postponement of the trial date and that motion was granted. The trial was subsequently set for April 15. That January 3 postponement, therefore, turned out to be the critical postponement that caused the trial to be held beyond the 180-day deadline.

The appellant's present complaint that the 180-day rule was violated because of the failure of the court to conduct a "good cause" hearing before the administrative judge, however, is quite beside the point. Even assuming a violation of Rule 4-271 and Article 27, § 591, the appellant, himself a party to the violation, may not exploit it.

The appellant overlooks two closely related and very fundamental principles. When an attorney represents a client in the trial of a lawsuit, the attorney 1) is not a party to the lawsuit and 2) is not a stranger to his client, notwithstanding a discernible tendency of defendants to distance themselves from defense counsel whenever a trial goes badly. The attorney is the agent of the client. With limited exceptions not here pertinent, the defense attorney, therefore, is authorized by basic principles of agency to make decisions for a defendant that are binding on the defendant.

When the State, in January of 1997, sought a postponement of the January 7 trial date in order to obtain a transcript of testimony taken at a motions hearing on December 30, 1996, counsel for the appellant expressly stated that he had no objection to such a postponement. There was still, to be sure, ample time within which to reschedule the trial before the March 4 deadline. It was defense counsel, however, who indicated that he would be out of the state for the entire month of February. A scheduling accommodation for the benefit of defense counsel is presumptively an aspect of the total defense interest and not something antithetical to it. On behalf of the appellant, therefore, there was filed, through his attorney, a "Waiver of the 180-Day Rule." The appellant, with ill grace, now seeks to repudiate that action taken by his agent on his behalf. He may not do so.

In *State v. Brown*, 307 Md. 651, 658, 516 A.2d 965 (1986), the Court of Appeals, through Judge Eldridge, flatly characterized the sanction of dismissal as inappropriate when a defendant, directly or through counsel, has consented to such postponement:

> Finally, even when a circuit court criminal case has been postponed beyond the 180-day limit in violation of § 591 and Rule 746, *the sanction of dismissal is inapplicable "where the defendant, either individually or by his attorney, seeks or expressly consents to a trial date in violation of Rule 746." State v. Hicks, supra*, 285 Md. [310] at 335, 403 A.2d 356 [1979]. *See Pennington v. State, supra*, 299 Md.[23] at 28-29, 472 A.2d 447 [1984]; *State v. Frazier, supra*, 298 Md. [442] at 447 n. 17, 470 A.2d 1269 [1984]; *Goins v. State, supra*, 293 Md. [97] at 108, 442 A.2d 550 [1982]. This is not because the defendant, by his action or consent, has

> "waived" the requirements of § 591 and Rule 746, so that the requirements are inapplicable. Rather, it is because *"[i]t would . . . be entirely inappropriate for the defendant to gain advantage from a violation of the rule when he was a party to that violation." State v. Hicks, supra*, 285 Md. at 335, 403 A.2d 356.

(Emphasis supplied).

As recently as *Jackson v. State*, 120 Md. App. 113, 136-37, 706 A.2d 156 (1998), Judge Eyler for this Court referred to the inappropriateness of the dismissal sanction when the defendant has consented to the violation of the Rule:

> Under *Hicks* and its progeny, when a trial date is postponed beyond the 180 day period, without a finding of the requisite cause by the administrative judge or his or her designee, dismissal is mandatory *unless* the defendant seeks or expressly consents to a trial date in violation of the rule. *State v. Parker*, 347 Md. 533, 537-38, 702 A.2d 217 (1995); *Goins*, 293 Md. at 107-08, 442 A.2d 550; *Franklin [v. State]*, 114 Md. App. [530] at 534, 691 A.2d 257 [1997].

(Emphasis in original).

The actions of counsel in this regard, moreover, are binding on a defendant and are not sapped of vitality simply because the defendant has not directly or personally participated in the decision-making process. In *Woodlock v. State*, 99 Md. App. 728, 738, 639 A.2d 188 (1994), Judge Getty observed for this Court:

> *Where counsel*, being aware of the Rule, *consents to a trial date beyond the limitations set by the Rule, dismissal would be an inappropriate sanction for non-compliance.*

(Emphasis supplied).

In criminal cases, defense counsel 1) are presumed to know the law; 2) are empowered, with exceptions not here pertinent, to act on behalf of their clients; and 3) are, in the absence of clear evidence to the contrary, deemed to have acted on behalf of their clients. These principles were lucidly articulated by Judge Wilner for this Court in *State v. Lattisaw*, 48 Md. App. 20, 28-29, 425 A.2d 1051 (1981):

> *Defense counsel presumably can count to 180 as well as prosecutors*; they know when they entered their appearances—when the clock began to tick—and they can figure out when the time under the Rule expires. These were not inexperienced counsel; according to the record, both attorneys had extensive background in the trial of criminal cases and were well aware of both the Rule and the interpretation given to it in *Hicks*. *They both agreed to the June 9 date because it was convenient to them and, in the absence of any contrary indication, we assume was acceptable to their clients. . . . To require dismissal of an indictment in such a case would be tantamount to doing precisely what the Court said was inappropriate—permitting "the defendant to gain advantage from a violation of the rule when he [through counsel] was a party to that violation."*

(Footnote omitted; emphasis in [sic] supplied).

The Carroll Doctrine Exception to the Warrant Requirement

The appellant will fare better, however, with his second contention. He claims that at a pre-trial hearing on his motion to suppress physical evidence, the hearing judge erroneously declined to suppress the evidence. The

evidence consisted of 23 grams of cocaine and approximately $3,150 in U.S. currency. The evidence was seized by deputy sheriffs of the St. Mary's County Sheriff's Department at approximately 1 A.M. on the morning of July 3, 1996. It was discovered as a result of the warrantless search of a red Toyota that had been rented by the appellant several days earlier from the Enterprise Rental Company and was, immediately prior to its stop and search, being driven by the appellant on Route 235 in the vicinity of Lexington Park. It is the Fourth Amendment propriety of that warrantless search that concerns us in this case.

The core protection of the Fourth Amendment is the warrant requirement. As a general rule, nothing less than probable cause will justify an intrusion, even in the service of the investigative imperative, into a protected area, such as an individual's home, automobile, luggage, or pockets. The purpose of the warrant requirement is to make sure that the determination as to whether probable cause exists will be made, whenever reasonably possible, by a neutral and detached member of the judicial branch of government rather than by a member of the executive branch engaged in the investigation and prosecution of crime. The notion is that, absent some dire emergency, you should not be permitted to "call the balls and strikes" if you are a player on one of the competing teams. It is preferable, when feasible, to have a disinterested umpire make those delicate judgments. The principle was best expressed by Justice Robert Jackson in *Johnson v. United States*, 333 U.S. 10, 13, 68 S.Ct. 367, 92 L.Ed. 436 (1948):

> The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which

reasonable men draw from evidence. Its protection consists of requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.

The guidelines for implementing that warrant requirement were succinctly spelled out by *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971):

> [T]he most basic constitutional rule in this area is that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." The exceptions are "jealously and carefully drawn," and there must be "a showing by those who seek exemption . . . that the exigencies of the situation made that course imperative." "[T]he burden is on those seeking the exemption to show the need for it."

(Footnotes omitted).

The command of the Fourth Amendment is simple. When the police wish to search a home or an automobile for evidence of crime, the expected way to do business—the norm—is for them to obtain a judicially-issued search and seizure warrant. As a practical matter, however, it is not always possible to do so. When, therefore, it is not possible or feasible to obtain a warrant because of some exigency, the police will be exempted from the warrant requirement. Such exemptions, however, are the exceptions to the rule and not the rule itself. The command of the Fourth Amendment to the American police officer and the American prosecutor is simple:

"You always have to get a warrant—
UNLESS YOU CAN'T."

The burden, moreover, is always on the party claiming that he could not get a warrant to establish to the satisfaction of the court precisely why he could not. The police must set forth the exceptional circumstances that justify the exceptional departure from the norm. As a general rule when dealing with any exception to the warrant requirement, the State must rebut the presumptive unreasonableness of a warrantless search and seizure by showing that the set of necessary preconditions for the exception in question has been satisfied. The burden is not that difficult. It is a burden, however, that may not be ignored.

The exception to the warrant requirement that the State relies on in this case is the so-called "automobile exception" or the better-called "*Carroll* Doctrine." A brief word may be in order as to preferred terminology. The use of the term "*Carroll* Doctrine" for this exception avoids some possible confusion emanating from the fact that "automobile exception," as a term, is both under-inclusive and over-inclusive.

It is an under-inclusive term because it fails to make expressly clear that it covers legitimate warrantless intrusions into many repositories of possible evidence that are not literally automobiles. Included are such obvious automobile equivalents as trucks, *United States v. Johns*, 469 U.S. 478, 105 S.Ct. 881, 83 L.Ed.2d 890 (1985), and buses. Also included, however, are other possible repositories that share with the automobile the characteristics of 1) ready mobility, *California v. Carney*, 471 U.S. 386, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985) and

2) a lesser expectation of privacy, *Cady v. Dombrowski*, 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973); *Cardwell v. Lewis*, 417 U.S. 583, 94 S.Ct. 2464, 41 L.Ed.2d 325 (1974). Covered would be such slightly less obvious automobile equivalents as motorcycles; bicycles; motor homes, *California v. Carney, supra*; motorboats; sailboats, *United States v. Villamonte-Marquez*, 462 U.S. 579, 103 S.Ct. 2573, 77 L.Ed.2d 22 (1983); airplanes; wagons; horses with saddlebags; and even suitcases or other containers, *California v. Acevedo*, 500 U.S. 565, 111 S.Ct. 1982, 114 L.Ed.2d 619 (1991).

Conversely, the term "automobile exception" is over-inclusive because it seems to cover all legitimate warrantless intrusions into the interior of an automobile when, in fact, it does not. Many legitimate warrantless intrusions into the interiors of automobiles are justified by something other than the combination of 1) probable cause and 2) exigency required by the *Carroll* Doctrine. An intrusion into an automobile may be justified, for instance, as a search incident to lawful arrest. *Preston v. United States*, 376 U.S. 364, 84 S.Ct. 881, 11 L.Ed.2d 777 (1964); *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981). An automobile may be warrantlessly stopped and searched as a "stop" within the contemplation of *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). *United States v. Cortez*, 449 U.S. 411, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981). An automobile may be warrantlessly entered as part of a "frisk" within the contemplation of *Terry v. Ohio*. *Adams v. Williams*, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972); *Michigan v. Long*, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983). Items may be warrantlessly seized from an automobile, following a prior valid intrusion for some

other purpose, pursuant to the Plain View Doctrine. *Cady v. Dombrowski*, 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973); *Cooper v. California*, 386 U.S. 58, 87 S.Ct. 788, 17 L.Ed.2d 730 (1967). An automobile may be warrantlessly searched by virtue of the consent exception. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); *Florida v. Jimeno*, 500 U.S. 248, 111 S.Ct. 1801, 114 L.Ed.2d 297 (1991). All of these valid warrantless searches of and seizures from automobiles have nothing to do with the so-called "automobile exception." *See also* Moylan, *The Automobile Exception: What It is and What It Is Not—A Rationale in Search of a Clearer Label*, 27 Mercer L.Rev. 987 (1976).

Yielding seniority only to a warrantless search incident to lawful arrest, which comes to us from English common law, see discussion in *Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969), the legal phenomenon of a legitimate warrantless search of an automobile is the second oldest of what are now the firmly rooted exceptions to the warrant requirement. It was first recognized in the eponymic case of *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925). For a good *Carroll* Doctrine search of an automobile, two conditions must coalesce:

1) **PROBABLE CAUSE** to believe that evidence of crime is contained in the automobile or automobile equivalent; and
2) **EXIGENCY**.

The exigency arises from the ready mobility of the automobile or automobile equivalent. It is the risk of imminent disappearance of the automobile or automobile equivalent and, more significantly, the subsumed risk of

the imminent disappearance of the probable evidentiary contents of that automobile or automobile equivalent if the police are not permitted to "seize the current as it serves."[1]

Probable Cause

The appellant argues that the State lacked the probable cause required by the *Carroll* Doctrine for the warrantless search of his automobile. We fully agree with the State, however, that the probable cause to believe that the automobile contained narcotic drugs was abundant. Sergeant Lyle E. Long was a 23-year veteran of law enforcement, who had been assigned to the Narcotics Section of the St. Mary's County Sheriff's Department for approximately ten years.

It was at 11 A.M. on July 2, 1996 when he received the critical telephone call from a confidential informant. A key component of the probable cause in this case was the probable reliability of that informant. It was not an anonymous informant but one with whom Sergeant Long had a previous working relationship. The informant had, moreover, what the case law calls "a good track record." The informant had, while working with Sergeant Long, made a controlled buy from a private residence that led to the issuance of an earlier search and seizure warrant. The execution of that warrant, in turn, uncovered a substantial quantity of crack cocaine and resulted in a criminal conviction. Sergeant Long also carefully pointed out that he had never received information from the confidential informant that was found to be false or misleading.

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[1] William Shakespeare, *Julius Caesar*, Act IV, Scene 3.

On another occasion, Sergeant Long had interviewed the informant and established the informant's knowledge as to the narcotics traffic generally and as to narcotics activity in St. Mary's County specifically.

The informant told Sergeant Long that the appellant was in the New York City area on that day (July 2) for the purpose of purchasing cocaine. He further reported to Sergeant Long that the appellant would be leaving New York at 11 A.M. that morning and would be returning to St. Mary's County with the cocaine. He informed the Sergeant that the appellant was operating a red Toyota with Maryland license tag number DDY 787. He informed Sergeant Long that the red Toyota was a rental vehicle.

By way of buttressing reliability, the information from the informant was very specific and very detailed. That factor is what the case law has called "self-verifying detail." *See Jackson v. State*, 81 Md. App. 687, 693, 569 A.2d 712 (1990). Such detail has generally been accepted as a way of showing that the informant had first-hand knowledge and was not passing on some mere generalized rumor.

An additional corroborating factor was the information independently possessed by Sergeant Long himself. Sergeant Long indicated that he was already familiar with the appellant prior to receiving the July 2 telephone call. He indicated that he had received information that the appellant was a supplier of cocaine in the Lexington Park area of St. Mary's County. Sergeant Long indicated that he knew the appellant by sight. By way of corroborating the fact that the appellant was operating a rental car, Sergeant Long knew independently that the appellant had recently had an accident with his own car and was,

therefore, in need of finding some substitute vehicle.

Further corroboration of the telephone conversation was immediately forthcoming. Sergeant Long checked the Maryland tag number that had been given him by the informant with the Department of Motor Vehicles and learned that that tag for a red Toyota Corolla had been issued to the Enterprise Rental Car Company. Sergeant Long then checked with Enterprise and learned that the red Toyota in question had been rented by Enterprise to the appellant.

Based on detailed information from a reliable informant and on significant independent corroboration of that information, the police had abundant probable cause to believe that cocaine was being carried in the appellant's automobile.

The Exigency Component of the Carroll Doctrine

The word "automobile" is not a talisman in whose presence the Fourth Amendment fades away and disappears.

. . . *Coolidge v. New Hampshire*, 403 U.S. 443, 461, 91 S.Ct. 2022, 2035, 29 L.Ed.2d 564, 580 (1971)

It is the second of the *Carroll* Doctrine's necessary preconditions for a warrantless search that concerns us in this case. Was there an exigency that prevented the police from obtaining a search warrant for the appellant's car or that even made it significantly difficult to obtain such a search warrant?

The critical confrontation by the St. Mary's County Sheriff's Department and the appellant's automobile occurred at 1 A.M. on July 3 on a rural roadway. Standing at that critical moment in time, Fourth Amendment

exigency, like the Roman god Janus, looks both forward and backward in time. Looking forward, no one can contest the State's argument that exigency existed. A readily movable, let alone a moving, automobile on a rural highway in the wee hours of the morning poses a heavy risk of disappearance. Exigency looking in that direction, however, is not our concern in this case.

Our concern is with the thirteen or fourteen hours that preceded that 1 A.M. confrontation. The question is not whether exigency existed at 1 A.M. on July 3. It is whether exigency existed at High Noon on July 2.

It is important that our decision in this case not be read overbroadly. The courts will not stand with a stopwatch monitoring the police effort with stern scrutiny. Heroic efforts to satisfy the warrant requirement are not demanded of them. The general reasonableness of their efforts is all that is realistically required. The courts will continue to be understanding of practical police difficulties and will be indulgent—**TO A POINT**. The exigency requirement is not non-existent, however, and may not be blithely ignored.

The bulk of the probable cause in this case had been established when Sergeant Long put down the telephone shortly after 11 A.M. on July 2. Much of the corroboration of the telephoned information already existed in his head. Further significant corroboration required nothing more than two easy and routine telephone calls—one to the Department of Motor Vehicles and the second to the Enterprise Car Rental Company. Although that corroboration might have been a *fait accompli* as early as 11:20 or 11:30 A.M., we will round it off, for purposes of further discussion, at noon.

As of that corroboration, the probable cause in this case

was not marginal; it was abundant. With it in hand, the Sheriff's Department clearly had the fully intended purpose of searching the appellant's vehicle once it could be located. As the officers later set out to execute that purpose, theirs was no mere contingent or conditional mission depending on one final piece of the puzzle falling into place. The Sheriff's Department by mid-day on July 2 had all of the probable cause it thought it needed. The Sheriff's Department, moreover, was right in that regard. The question for us is whether it was realistically feasible for them, at that time, to have applied for a search warrant.

Had the probable cause in this case jelled during the evening hours or over a weekend, the result might not be the same. In this case, however, the probable cause jelled by roughly noon on Tuesday, July 2, 1996, a working day. Had the probable cause been developed at some remote observation post, the result might not be the same. In this case, however, the probable cause was developed in downtown Leonardtown, the county seat. Had the probable cause required some fifteen pages of tightly packed data and had no stenographic resources been available, the result might not be the same. In this case, however, the probable cause was developed in the headquarters building of the Sheriff's Department and could easily have been typed within the four corners of a single page. Had geographic or climatic conditions made access to a judge difficult, the result might not be the same. In this case, however, the Sheriff's Department shared a parking lot with the county courthouse, where two circuit judges normally reside, and a third judge sits at the District Court a short distance away.

In short, the State has failed to carry its burden of showing the type of exigency necessary to exempt it from

the warrant requirement. It has not shown that it would have been impossible, or even particularly difficult, for the Sheriff's Department to have obtained a judicially-issued search and seizure warrant for the appellant's car. Absent such a showing, the State may not resort to the *Carroll* Doctrine as a reasonable exemption from the warrant requirement. The warrantless search under the circumstances was not reasonable within the contemplation of the Fourth Amendment.

Epilogue

Although the warrantless search of the appellant's automobile in this case could not be justified under a *Carroll* Doctrine rationale, we entertained the possibility that it might nonetheless be salvaged under a different rationale, to wit, as a search incident to lawful arrest. The same probable cause that pointed to contraband narcotics being in the appellant's automobile also pointed to the appellant himself as one then engaged in the lawful possession of such narcotics. That probable cause justified the warrantless arrest of the appellant. A warrantless arrest, provided it is not inside a house, is not subject to the same exigency requirement that inhibits a *Carroll* Doctrine search of an automobile. *United States v. Watson*, 423 U.S. 411, 96 S.Ct. 820, 46 L.Ed.2d 598 (1976). When one is arrested, moreover, inside of an automobile or standing close by an automobile, the permitted scope of the automatically available search incident—the *Chimel* perimeter—embraces the passenger compartment of the automobile. *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981).

Had the evidence in this case been found in the

passenger compartment of the appellant's automobile, the warrantless search for and seizure of it would have been reasonable as a search incident to the appellant's lawful arrest even though, as we have held, it was not reasonable under the *Carroll* Doctrine. Unfortunately for the State, however, the alternative theory is of no avail. The evidence in this case was found by the Sheriff's Department inside a duffel bag in the trunk of the appellant's automobile. That was beyond even the arbitrarily extended *Chimel* perimeter afforded by *New York v. Belton*. The warrantless search of the automobile in this case, therefore, had to rise or fall according to the *Carroll* Doctrine.

JUDGMENT REVERSED; COSTS TO BE PAID BY ST. MARY'S COUNTY.

APPENDIX C

[Trial court's August 26, 1997 ruling, in the Circuit Court for St. Mary's County, Maryland, the Honorable Marvin S. Kaminetz, *State of Maryland v. Kevin D. Dyson*, Criminal Case No. 96-335]

Counsel, the court has certainly listened to your fine arguments, listened to the testimony very carefully. What the court does find is certainly that the law does require -- that the Carroll doctrine is an exception to the requirement of a warrant, and the exigency is still required under the Fourth Amendment for the Carroll doctrine to apply. Just because it is an automobile doesn't mean, does not mean that the requirement of exigency or urgency goes away.

The Supreme Court has spoken on that issue. There are Maryland cases along those lines. I have looked at a couple of cases during the recess. I have looked at United States versus Johns, which is 469 U.S. 478, a 1985 case; Florida versus Myers, 463 U.S. 380. I have looked at Fowler versus State, which is 79 Md. App. 517. Cert was denied in this particular case. I do find there were exigent circumstances in the case. I find there was probable cause and the required exigent circumstances.

The police officers had a tip from a person they considered reliable. They acted and reacted upon that tip. They intended to corroborate the evidence as best they could based upon the information they had from their confidential informant. Before this stop was made they had corroborated -- the last step in the corroboration in this particular case was the verification

of the tag number, the vehicle, and the place that it was said that it was going to be. Then stopping the vehicle at that particular point once they had their corroboration, that created an exigent circumstance. They couldn't stop the vehicle and hold the vehicle at the curbside and then go get a warrant.

I think they were justified in making the search based upon the circumstances after they corroborated the information that they had from their confidential informant. The court is going to deny the motion to suppress for the reasons stated.